

NOW COMES defendant Lumbermens Mutual Casualty Company (“Lumbermens”), by its attorneys, Duane Morris, LLP, who moves this Court pursuant to Fed. R. Civ. P. 56 and S.D.N.Y. Local Rule 56.1, for an order against Plaintiffs, Southern New Jersey Rail Group (“Rail Group”) and New Jersey Transit Corporation (“NJT”) dismissing Plaintiffs’ claim for insurance coverage for failure to comply with the Lumbermens’ claims-made policy’s requirement that claims be made and reported during the policy period and for providing late notice of claim.

1. Rail Group seeks defense and indemnity from Lumbermens under Construction, Engineering and Design Professional Liability Policy No. 4LS000620-00 (the “Policy”) for counterclaims brought against Rail Group by NJT.

2. The Policy period commenced on September 30, 1999 and expired on September 30, 2002. The Policy period was subsequently extended to June 30, 2003.

3. NJT’s professional liability counterclaims against Rail Group were made on March 3, 2003. These claims were not made during the original policy period or Automatic Extended Reporting Period (“AERP”).

4. Rail Group provided notice of the counterclaims on September 4, 2003. This was after the expiration of the Policy period, the AERP, the extended policy period, and the extended AERP. Rail Group’s notice of claim was also late as a matter of law for having waited almost six months to give notice of NJT’s counterclaims and forward the pleadings to Lumbermens.

5. Lumbermens is entitled to summary judgment because, in providing notice of the counterclaims after the Policy period, the insureds failed to comply with the Lumbermens’ claims-made policy’s requirement that claims be made and reported during the policy period and that claims be immediately reported.

WHEREFORE, for the reasons set forth above, and for the reasons set forth in Lumbermens' Memorandum In Support of Their Motion for Summary Judgment Based on Claims Made Outside the Policy Period, Untimely Reporting of Claims, and Late Notice, the Affidavit of Richard T. Apiscopa, Consolidated Statement of Material Facts, and the accompanying exhibits thereto, Lumbermens respectfully requests that this Court:

- 1) Grant Summary Judgment in Lumbermens' favor and dismiss all claims in the complaint; and
- 2) Provide such other relief as may be just and proper.

Dated: New York, New York
June 15, 2007

Respectfully Submitted:

By: /s/ Richard T. Apiscopa
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Lumbermens' Motion for Summary Judgment Based Claims Made Outside the Policy Period, Untimely Reporting of Claims, and Late Notice," along with the accompanying Memorandum of Law, Consolidated Statement of Material Facts, Affidavit of Richard T. Apiscopa, and exhibits, was served on the following persons on June 15, 2007 in the manner specified herein.

Electronically served through ECF:

Philip R. White
Howard M. Rosen
David A. Fultz
James D. O'Connor
Dawn C. Van Tassel
Thomas Steven Novak
Kirk O. Kolbo

Dated: June 15, 2007

/s/ Richard T. Apiscopa
Richard T. Apiscopa